

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN, and
SHAUN D. COHEN,

Defendants.

Civil Action No.: 18-CV-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**VENTUS HOLDINGS, LLC'S AND VENTUS MERRILL, LLC'S COMBINED
EMERGENCY MOTION TO VACATE SALE UNTIL THE COURT RULES ON MOTION
TO STAY**

Ventus Holdings, LLC and Ventus Merrill, LLC (collectively "Ventus") through their attorney, Michael B. Elman & Associates, Ltd., for their Combined Emergency Motion to Vacate Sale Until the Court Rules on the Motion to Stay, states as follows:

PROCEDURAL HISTORY

1. On June 11, 2020 the Receiver filed an eighth motion to confirm sale of certain real estate (Docket No. 712). It is this motion that concerns the Ventus real estate contracts.
2. Objections to the motion were filed (i) by Ventus on July 17, 2020 (Docket No. 746), (ii) secured lender Thorofare Asset Based Lender REIT on July 2, 2020 (Docket No. 730) and (iii) secured lender Liberty EBCP, LLC on July 2, 2020 (Docket No. 728). The Receiver filed a reply to the motion on July 8, 2020 (Docket No. 739).

3. On October 26, 2020 an order was entered granting the motion (Docket No. 825) and on October 30, 2020 an order was entered authorizing the sale of the real estate (Docket No. 841).

4. On November 2, 2020 Ventus filed a motion to stay enforcement of the orders entered on October 26 and 30, 2020 (Docket No. 848). A copy of the motion is attached hereto as Exhibit A. Also on November 2, 2020, Ventus filed a Notice of Appeal seeking review of the October 26 and October 30, 2020 orders (Docket No.847).

5. On November 5, 2020 an order was entered stating that the Court would take Ventus' motion to stay under advisement (Docket No. 860). A copy of this order is attached hereto as Exhibit B.

6. On November 11, 2020 the Receiver filed an opposition to the motion to stay. (Docket No. 869).

7. On November 13, 2020 Ventus filed a motion seeking leave to file a response to the Receiver's opposition (Docket No. 875).

8. On November 16, 2020 an order was entered directing the Receiver to delay the sales for 14 days (Docket No. 877). A copy of this order is attached hereto as Exhibit C.

9. On November 18, 2020 Ventus filed its response to the Receiver's opposition (Docket No. 879).

10. Earlier today, December 3, 2020, the Receiver filed a Notice of Sales, advising the Court that the properties subject to the motion to stay had been sold (Docket No. 889). A copy of this notice is attached hereto as Exhibit D.

ARGUMENT

11. The Court has not issued a ruling on the pending motion to stay.
12. Despite the Receiver having knowledge of the pending motion to stay as well as the pending appeal, the Receiver never sought permission of the Court to proceed with the sale, even though the Receiver was aware of the Court's orders, specifically addressing the issue of the sale, namely:
 - A. The order entered on November 5, 2020 wherein the motion to stay was taken under advisement and to date, not ruled upon; and
 - B. The order entered on November 16, 2020 delaying the sale for 14 days.
13. Unless the sales are vacated, Ventus, as well as the secured creditors and the Receivership Estate, may suffer irreparable harm.
14. Balancing the equities, the purchasers will incur minimal, if any, harm but the harm suffered by Ventus may be irreversible. Its motion to stay, as well as its appeal rights may be mooted.

WHEREFORE, Ventus Holdings, LLC and Ventus Merrill, LLC respectfully request that the Court enter an order granting the following relief:

- A. Vacate the sales identified in the Receiver's Notice of Sale filed on December 3, 2020;
- B. Prohibit the Receiver from selling the properties until (i) the Court issues an order in connection with the pending motion to stay; and (ii) advance notice is

served to Ventus and all other interested parties.

Respectfully submitted

s/Michael B. Elman
Attorney for
Ventus Holdings, LLC
Ventus Merrill, LLC

Michael B. Elman & Associates, Ltd.
10 South LaSalle Street, Suite 1420
Chicago, Illinois 60603
(312)541-0903
melman@mbermanlaw.com

CERTIFICATE OF SERVICE

I hereby certify on December 3, 2020, the undersigned electronically filed Ventus Holdings, LLC's and Ventus Merrill, LLC's Combined Motion to Vacate Sale Until the Court Rules on the Motion to Stay, via the CM/ECF system and copies thereof were served to counsel of record via the CM/ECF system.

/s/ Michael B. Elman
Attorney for
Ventus Holdings, LLC
Ventus Merrill, LLC

Michael B. Elman & Associates, Ltd.
10 South LaSalle Street, Suite 1420
Chicago, Illinois 60603
(312)541-0903
melman@mbelmanlaw.com